

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

10 MICHAEL CARROLL,

11 Plaintiff,

12 v.

13 MARY J. LEE, et al.,

14 Defendants.  
15  
16

Case No. 08-cv-0975-RSL

ORDER ON MOTIONS

17 This matter comes before the Court on the Honorable Robert S. Lasnik's Order  
18 Vacating Report and Recommendation and Referring Plaintiff's Motions. Dkt. No. 53. In his  
19 Order, Chief Judge Lasnik referred three of Plaintiff's motions to this Court for *de novo*  
20 consideration, pursuant to 28 U.S.C. § 636(b)(1), Local Rule MJR 3, and Fed. R. Civ. P. 72(a).  
21 *Id.* Specifically, Judge Lasnik referred Plaintiff's Motion for Enlargement of Time for  
22 Discovery/Modification of Scheduling Order, Dkt. No. 19; Motion for Appointment of  
23 Counsel, Dkt. No. 28; and request for three subpoena forms, Dkt. No. 29. *Id.* After *de novo*  
24 consideration of all the applicable pleadings, the governing law, and the balance of the record,  
25 the Court ORDERS as follows:  
26

1           1.     Motion for Enlargement of Time for Discovery

2               a.     Background

3           A brief background of this action is first necessary because of the unusual posture of  
4 this motion. This lawsuit commenced on July 18, 2008. Dkt. No. 4. On August 18, 2008, five  
5 of the six defendants (“the DOC defendants”) answered the complaint. Dkt. No. 11. On  
6 September 5, 2008, the Honorable Brian A. Tsuchida issued a Scheduling Order directing the  
7 parties to complete discovery by November 4, 2008. Dkt. No. 15. On September 10, 2008, the  
8 DOC defendants filed a motion for judgment on the pleadings. Dkt. No. 16.

9           On October 6, 2008, Plaintiff filed the instant Motion for Enlargement of Time for  
10 Discovery. Dkt. No. 19. His motion seeks a 90-day extension to complete discovery pursuant  
11 to Fed. R. Civ. P. 6(b) for the following reasons: “after the first request for production of  
12 documents and interrogatories, there is going to be more requests for production, and  
13 interrogatories”; “as the holiday season approaches, Thanksgiving and Christmas, it is  
14 expected that the law library will be closed even more than usual”; he expects objections to his  
15 discovery demands and “anticipates that there will be a need to file motions to compel  
16 disclosure”; Defendant Kara Dansky has not yet filed an answer or response to the complaint;  
17 and Plaintiff is expecting to obtain a “missing document” through the grievance process at his  
18 prison and the grievance process has not yet concluded. Dkt. No. 19 at 1-2.

19           On November 6, 2008, after the close of discovery, the sixth and final defendant, Kara  
20 Dansky, who was Plaintiff’s public defender at a single probation hearing, filed a motion for  
21 summary judgment. Dkt. No. 23. On December 4, 2008, the DOC defendants also filed a  
22 motion for summary judgment. Dkt. No. 32. The DOC defendants’ motion for judgment on  
23 the pleadings, Dkt. No. 16, and motion for summary judgment, Dkt. No. 32, and Defendant  
24 Dansky’s motion for summary judgment, Dkt. No. 23, are now pending before Judge Lasnik.  
25 *See* Dkt. No. 53.

1                   b.     Discussion

2             Pursuant to Fed. R. Civ. P. 6(b), the Court may extend the time by which discovery  
3 shall be completed only for good cause shown. Here, Plaintiff has not shown good cause to  
4 support his motion to extend time to complete discovery, which was filed one month prior to  
5 the close of discovery. The proffers are largely possible future scenarios. Moreover, Plaintiff  
6 has failed to provide any reason why he could not complete all discovery, including filing any  
7 motions to compel, within the time allotted by the Scheduling Order. *See* Dkt. No. 15.

8             Defendant Dansky did not file an answer or response to the complaint. She filed a  
9 motion for summary judgment in lieu of an answer on November 6, 2008. Dkt. No. 23.  
10     Defendant Dansky's motion for summary judgment is based on a 12(b)(6) motion to dismiss  
11 but was presented as a motion for summary judgment because certain matters outside the  
12 pleadings were submitted in support of the motion; specifically, two declarations (from  
13 Defendant Dansky and her legal counsel) and attached exhibits concerning Defendant  
14 Dansky's representation of Plaintiff as his public defender at a single probation hearing and  
15 Plaintiff's broader legal proceedings in King County Superior Court. *See* Dkt. Nos. 23-26.  
16 Accordingly, any answer from Defendant Dansky would not be due until after Judge Lasnik  
17 rules on her pending motion. *See* Fed. R. Civ. P. 12(a)(4)(A). Should Defendant Dansky be  
18 required to file an answer, Plaintiff may ask this Court to reopen discovery at that time.

19             In view of the foregoing, Plaintiff's Motion for Enlargement of Time for Discovery/  
20 Modification of Scheduling Order, Dkt. No. 19, is DENIED.

21             2.     Motion for Appointment of Counsel

22             Plaintiff's Motion for Appointment of Counsel, Dkt. No. 28, is DENIED. There is no  
23 right to have counsel appointed in cases brought under § 1983. The Court may appoint counsel  
24 only on a showing of "exceptional circumstances." *Wilborn v. Escalderon*, 789 F.2d 1328,  
25 1331 (9th Cir. 1986). "A finding of exceptional circumstances requires an evaluation of both  
26 the likelihood of success on the merits and the ability of the plaintiff to articulate his claims

1 *pro se* in light of the complexity of the legal issues involved.” *Id.* These factors must be  
2 viewed together before reaching a decision on a request for counsel. *Id.*

3 Here, the Court finds that Plaintiff has failed to demonstrate that exceptional  
4 circumstances warrant the appointment of counsel at this time. Plaintiff has provided no  
5 evidence that his case is likely to succeed on the merits. Furthermore, although Plaintiff has  
6 alleged that conducting discovery in this case has been difficult for him given his incarceration,  
7 Dkt. No. 28 at 5, “the need for such discovery does not necessarily qualify the issues involved  
8 as complex.” *Wilborn*, 789 F.2d at 1331. In sum, Plaintiff has neither demonstrated a  
9 likelihood of success on the merits nor shown that, in light of the complexity of the legal issues  
10 involved, he is unable to articulate his claims *pro se*. Indeed, Plaintiff has demonstrated over  
11 the course of this lawsuit that he is capable of articulating his claims. Accordingly, the Court  
12 concludes that appointment of counsel is not appropriate at this time.

13 3. Request for Three Subpoena Forms

14 Plaintiff’s request for three subpoena forms, Dkt. No. 29, is DENIED. Plaintiff is  
15 seeking “three ‘subpoena in a civil case’ forms . . . and instructions on serving them by mail.”  
16 Dkt. No. 29. However, Plaintiff has not demonstrated why he needs three subpoena forms;  
17 indeed, he made his request on or about November 20, 2008, see Dkt. No. 29, which was  
18 nearly two weeks after the close of discovery in this matter, see Dkt. No. 15.

19 The Clerk of the Court is directed to send to a copy of this Order to Plaintiff, counsel  
20 for all Defendants, the Honorable Robert S. Lasnik, and the Honorable Brian A. Tsuchida.

21 DATED this 23rd day of April, 2009.

22   
23 JAMES P. DONOHUE  
24 United States Magistrate Judge  
25  
26